



UNITED STATES PATENT AND TRADEMARK OFFICE

57
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,262	11/23/2001	Junji Shinohara	2038-280	2417
7590	05/03/2004		EXAMINER	
LOWE HAUPTMAN GILMAN & BERNER, LLP Suite 310 1700 Diagonal Road Alexandria, VA 22314			REICHLE, KARIN M	
			ART UNIT	PAPER NUMBER
			3761	10

DATE MAILED: 05/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/990,262	SHINOHARA ET AL.
	Examiner	Art Unit
	Karin M. Reichle	3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
 THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 26 June 2003.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 2-17 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 2-17 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 23 November 2001 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date Z.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: See Continuation Sheet.

DETAILED ACTION

Specification

Drawings

1. The drawings are objected to because the cross-sections of the Figures need to be denoted by Roman or Arabic numerals. In Figures 1 and 2, the leftmost 4b should be 4d. In Figures 4 and 5, the rightmost 4b should be 4d. In Figure 4 the brackets from 4a, 4b and 4c should be dashed. In Figure 7, 3d should be 3b. See accompanying marked up Figures. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the stiffness of the middle zone as compared to the front and rear zones as claimed in claims 2, 13, and 14, and thereby any claims which depend therefrom, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Description

3. 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: abstract, page 1, line 6 (Note the accompanying marked up copy of the specification).

4. The abstract of the disclosure is objected to because the abstract is too long, i.e. the abstract should be 50-150 words in length. Correction is required. See MPEP § 608.01(b).

5. While it is noted that the subject matter of claims 9 and 12 is shown in the Figures, the description of the invention would be in better form if textual antecedent basis for such were set forth.

6. The disclosure is objected to because of the following informalities: In claim 2 Applicant claims the front end portions of the transversely opposite side edges of said crotch portion, see page 14, lines 14 and 15 and portion designated 8a in Figure 1 as best understood, being closer to the front waist region than the rear end portions of said transversely opposite side edges of the crotch portion, see page 14, lines 17-18 and portion designated 8b in Figure 1 as best understood. First, is this feature determined when the waist portions are connected to each other or not (It is noted that the claim does not require the waist regions being connected)? If the former, such appears to be inaccurate because 8a and 8b are the same distance from the front waist region, see Figures 1 and 2, and if the latter, such is redundant. It is noted that the portion of the side edge in the rear which bulges out does not appear to be part of the rear end portion as described, see sentence bridging pages 14-15, the portion designated 10a in both Figures 1 and 2.

A clear description, including a textual description plus denotation in the Figure, of this claimed feature which is supported by the original specification should be set forth.

Appropriate correction is required.

Claim Objections

7. Claim 14 is objected to because of the following informalities: on line 1, “basic” should be --basis--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

8. Claims 2-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. For the purposes of this rejection, since “transversely” has not been specifically defined it will be given its ordinary meaning, i.e. +/-45 degrees with regard to the principal transverse axis of the undergarments. Claim 2, the only independent claim, as now set forth no longer requires a core placed substantially in the crotch region, the middle zone being in the longitudinally middle zone of the crotch region, the elastic members being attached under tension, and the elastic members extending in circular arcs towards the longitudinally middle zone of the crotch region but claims the front end portions of the side edges being closer to the front waist region than the rear end portions of the side edges, see discussion supra. Claim 3 no longer requires elastics attached under tension. Claim 9 now claims the crotch region has an area

extending transversely from side edge to side edge. In other words the claims as now set forth includes, e.g., an undergarment wherein the core extends substantially the length of the undergarment or one in which the middle zone is in the front or rear zone of the crotch region, nontensioned elastics extending linearly across the front and rear waist regions and the crotch zone including a nonlinear area transversely extending from side edge to side edge which is free from elastics. Where is the support for the invention of the scope as now claimed?

9. Claims 2-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

For the reasons already set forth supra, the second to last section of claim 2 is indefinite because it is unclear whether such feature is determined with the sides of the waist regions connected or not? If not, then such would be redundant.

Claim Language Interpretation

10. As set forth supra, the terminology "transversely" will be interpreted as +/- 45 degrees from the principal transverse axis. It is noted that the extent of the claimed regions and zones have not been specifically defined with respect to the extent of the overall undergarment length, e.g. the middle portion of the core is the middle third of the core and a specific percentage of the overall garment length. Due to the lack of clarity supra, the second to last section of claim 2 will be interpreted as requiring determination either with the sides connected or without the sides connected. It is noted that the last section of claim 2 does not require the stiffness of the entire core in the front and rear end zones being less stiff than the entirety of the

middle zone. The term "attached" is interpreted as being direct or indirect. Claim 9 is interpreted as requiring gaps between the third elastics and the first and second elastics.

Claim Rejections - 35 USC § 102

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

12. Claims 2-5, 7-8 and 10-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Elfstrom et al '055.

The Elfstrom '055 device, see Figures, abstract, paragraphs 54 and 55, is a disposable undergarment which includes a topsheet 10, a backsheet 11, 26, a core 12, a front waist region 17, a rear waist region 18, and a crotch region with curved side edges 19, the core includes a middle zone adjacent 44 or 44 and 43, a front zone in front of the middle zone, and a rear zone in back of the middle zone, the undergarment further includes a first elastic member 30, a second elastic member 31, the front end portions are closer to the front waist portion than the rear end portions when the waist regions are unconnected, see Figure 2, and the stiffness of the core is lower in the front and rear portions than in the middle portion, see claim language interpretation section and the zone adjacent 44 or 43 and 44 includes more layers than the zone adjacent 42 alone, i.e. stiffer. With regard to claim 3, see element 32. With regard to claims 4-5, 8 and 10,

see paragraphs 15-16 and 37. With regard to claim 7, see 10 in Figures. With regard to claim 10, also see paragraph 46. With regard to claims 11-12, see Figures.

Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

13. Claims 2, 4-5, 8, and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Molnlycke '920.

The Molnlycke '920 device, see Figures, and abstract, is a disposable undergarment which includes a topsheet 17, a backsheet 18, a core 12, a front waist region 22, a rear waist region 21, and a crotch region with curved side edges 20, the core includes a middle zone 16, a front zone in front of the middle zone, and a rear zone in back of the middle zone, the undergarment further includes a first elastic member 25, 30, 31, a second elastic member 24, 32, the front end portions are closer to the front waist portion than the rear end portions when the waist regions are unconnected, see Figures, and the stiffness of the core is lower in the front and rear portions than in the middle portion, see page 5, lines 11-13. With regard to claims 4-5, and 8, see page 6, lines 33-35 and page 7, lines 9-13. With regard to claims 11-12, see Figures. With regard to claims 13-14, see page 5, lines 13-19.

Claim Rejections - 35 USC § 103

14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 2-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Karami '874 in view of Molnlycke '920.

The Karami '874 device, see Figures, and abstract, is a disposable undergarment which includes a topsheet 101, a backsheets 106, a core 104, a front waist region 116, a rear waist region 115, and a crotch region with curved side edges between 113 and 114, the core includes a middle zone, the middle of 104, a front zone in front of the middle zone, and a rear zone in back of the middle zone, the undergarment further includes a first elastic member 128, a second elastic member 128, the front end portions are closer to the front waist portion than the rear end portions when the waist regions are unconnected, see Figures, With regard to claim 3, see elements 126, 127. With regard to claims 4-5, 7-8 and 10, see col. 6, paragraphs 22-24 and Figures 2, 3, 4, elements 101, 106 and 107. With regard to claims 11-12, see Figures, esp. Figure 2B. With regard to claims 6 and 9, see Figure 2. Therefore the Karami '874 device includes all the claimed structure except for the stiffness of the core zones with respect to each other and the structure of claims 13-14. However Karami '874 does disclose the desire to form a crotch portion which forms rings around the legs and a desire to provide a good and comfortable fit yet prevent leakage, see paragraphs 27 and 12. Also see the paragraph bridging pages 8-9 and page 5, lines 11-19 and Figures of of Molnlycke '920, i.e. stiffer middle core region between elastics form configuration which prevents leakage better. To employ a stiffer middle crotch zone between the elastics as taught by Molnlycke '920 on the Karami '874 device would be obvious to one of ordinary skill in the art in view of the recognition that such would improve the fit and prevention of leakage and the desire of '874 to improve fit and prevention of leakage.

16. Claims 2-9, 11, 13, and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rajala '916 in view of Van Gompel et al '089.

The Rajala '916, see Figures, and abstract, is a disposable undergarment which includes a topsheet 66 in Figure 4, a backsheets 12, 14, a core below 66 in Figure 4, a front waist region 16, a rear waist region 20, and a crotch region with curved side edges 24, the core includes a middle zone, the portion of 68 in the middle of the crotch region 24, see Claim Interpretation section supra, a front zone in front of the middle zone, and a rear zone in back of the middle zone, the undergarment further includes a first elastic member 50, a second elastic member 48, the front end portions are closer to the front waist portion than the rear end portions when the waist regions are unconnected, see Figures, With regard to claim 3, see elements 51. With regard to claims 4-5, see col. 11, lines 26-56 and Figures 1-2. In regard to claims 7-8, see col. 9, lines 17-20 and Figures 1, 2 and 4. With regard to claims 11, see Figures. With regard to claims 6 and 9, see Figure 1, and col. 11, line 63-col. 12, line 46. With regard to claims 15-17, see portions cited already and claims. Therefore the Rajala '916 device includes all the claimed structure except for the stiffness of the core zones with respect to each other and the structure of claim 13. However see the structure in Figure 2 labeled 76, Figure 4, abstract and col. 8, lines 22-35. Rajala '916 does not identify what the structure 76 in the secondary absorbent 66 is but expresses the desire to receive a primary absorbent thereon. Also see Van Gompel '089 at Figures 1 and 4 and col. 7, lines 62-67. Therefore to employ a discontinuous line of embossment as taught by Van Gompel et al as 76 on the Rajala et al device would be obvious to one of ordinary skill in the art in view of the recognition that such would aid in the placement of the primary absorbent and the desire of using a primary absorbent by Rajala. In so doing a portion of the embossment

in the middle zone of the core would be stiffer due to increased density than a density of a nonembossed portion in the front and rear end zones of the core. See Claim Language Interpretation section supra.

Response to Arguments

17. Applicants remarks have been considered but are deemed moot in that the issues discussed have not been reraised.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Karami '879 and Hasse references also teach various features of the claimed device.

19. If a copy of a provisional application listed on the bottom portion of the accompanying Notice of References Cited (PTO-892) form is not included with this Office action and the PTO-892 has been annotated to indicate that the copy was not readily available, it is because the copy could not be readily obtained when the Office action was mailed. Should applicant desire a copy of such a provisional application, applicant should promptly request the copy from the Office of Public Records (OPR) in accordance with 37 CFR 1.14(a)(1)(iv), paying the required fee under 37 CFR 1.19(b)(1). If a copy is ordered from OPR, the shortened statutory period for reply to this Office action will not be reset under MPEP § 710.06 unless applicant can demonstrate a substantial delay by the Office in fulfilling the order for the copy of the provisional application. Where the applicant has been notified on the PTO-892 that a copy of

the provisional application is not readily available, the provision of MPEP § 707.05(a) that a copy of the cited reference will be automatically furnished without charge does not apply.

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The amendments to claim 2 broadening some aspects but narrowing others as best understood and the addition of claims 4-17 necessitated any new grounds of rejection.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (703) 308-2617. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 308-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

K.M. Reichle
Karin M. Reichle
Primary Examiner
Art Unit 3761

KMR
April 27, 2004

Continuation of Attachment(s) 6). Other: marked up copy of specification.